

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**W.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Hillsdale, MI, Employer**

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**Docket No. 14-501  
Issued: June 12, 2014**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 7, 2014 appellant filed a timely appeal of a September 24, 2013 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant established a left shoulder or neck injury in the performance of duty on May 10, 2013.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the September 24, 2013 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

### **FACTUAL HISTORY**

On May 10, 2013 appellant, then a 54-year-old city carrier, filed a traumatic injury claim alleging that she sustained a left elbow bruise and contusion on that date when she fell on concrete while delivering mail. She was provided a Form CA-16 authorization for examination and/or treatment that day from her supervisor.<sup>3</sup>

A May 10, 2013 report from Hillsdale Community Health Center Emergency Department noted that appellant was seen that day and evaluated by Melva Wolcott, a nurse practitioner. Appellant was seen for a left knee abrasion and contusion to the left elbow, hip and knee. Diagnostic studies were obtained. Appellant was instructed not to work the following day and to follow up with her physician.

In a May 10, 2013 report, Rebecca Brownlee, a nurse, provided a medical history and physical findings. She noted that appellant was seen after she fell. Under history of the injury, Ms. Brownlee noted injuries to the left hip, knee and elbow with abrasions on the left knee and elbow. Appellant reported neck and back pain and left arm weakness.

The x-rays taken on May 10, 2013 revealed no left hip abnormality and left hip and elbow degenerative changes without fracture or destructive bone pathology.

In a June 3, 2013 report, Dr. Laurie L. Barkway, a treating Board-certified osteopathic family practitioner, reported that appellant was seen for left shoulder and neck pain complaints following a fall at work. The physical examination revealed neck swelling, pain and stiffness and joint and muscle pain. Dr. Barkway diagnosed acute neck pain and referred appellant to physical therapy.

On June 6, 2013 appellant filed a claim for a recurrence of disability for her neck pain which she attributed to the May 10, 2013 employment incident.

OWCP received a June 3, 2013 physical therapy prescription by Dr. Barkway and a physical therapy treatment note which reported a diagnosis of cervicalgia and calcified shoulder tendinitis. Appellant was evaluated on June 5, 2013 and received physical therapy treatment from June 5 to July 15, 2013.

By letter dated August 16, 2013, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required to establish her claim and given 30 days to provide this information.

In response to OWCP's request, appellant submitted physical therapy notes for treatment from July 15 through August 21, 2013.

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<sup>3</sup> Where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *Tracey P. Spillane*, 54 ECAB 608 (2003).

By decision dated September 24, 2013, OWCP denied appellant's claim. It accepted the May 10, 2013 incident but found insufficient medical evidence on causal relation.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.<sup>6</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>7</sup>

If a claimant does establish an employment factor, he or she must submit medical evidence showing that a medical condition was caused by such a factor.<sup>8</sup> The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence from a physician. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>9</sup>

### **ANALYSIS**

Appellant filed a traumatic injury claim alleging that on May 10, 2013 she sustained left elbow bruise and contusion when she fell on concrete after tripping while delivering mail. By

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<sup>4</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>5</sup> S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> 20 C.F.R. § 10.5(ee). See *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Donald W. Wenzel*, 56 ECAB 390 (2005).

<sup>7</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Frankie A. Farinacci*, 56 ECAB 723 (2005).

<sup>8</sup> *C.D.*, Docket No. 09-1881 (issued April 20, 2010); *Effie Morris*, 44 ECAB 470 (1993).

<sup>9</sup> *D.S.*, Docket No. 09-860 (issued November 2, 2009); *I.J.*, 59 ECAB 408 (2008); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

decision dated September 24, 2013, OWCP denied her claim. It accepted that the incident at work occurred as alleged but found that the medical evidence was not sufficient to establish causal relation.

The Board finds that the medical evidence submitted by appellant is insufficient to establish that she sustained an injury due to the accepted May 10, 2013 employment incident.

Appellant submitted a June 3, 2013 report from Dr. Barkway diagnosing acute neck pain. Dr. Barkway also provided a physical therapy prescription with the diagnoses for cervicalgia and calcified shoulder tendinitis. He noted that appellant had left shoulder and neck pain complaints following a fall at work. Dr. Barkway did not set forth any history of the May 10, 2013 incident or provide an opinion to the cause of her neck and left shoulder conditions. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>10</sup>

Appellant also submitted reports from Ms. Wolcott and Ms. Brownlee, nurse practitioners. The Board notes that a nurse is not a physician as defined under FECA.<sup>11</sup> Accordingly, medical opinions from Ms. Wolcott or Ms. Brownlee regarding diagnosis and causal relationship are of no probative medical value.<sup>12</sup> Similarly the physical therapy treatment notes do not constitute competent medical opinion evidence. A physical therapist is not a physician and is not competent to render a medical opinion under FECA.<sup>13</sup>

The x-ray interpretations are diagnostic in nature and do not provide any opinion on the cause of appellant's claimed condition.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>14</sup> Causal relationship must be established by rationalized medical opinion evidence from a physician based on a full and accurate history of the claim.

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<sup>10</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *K.W.*, 59 ECAB 271 (2007); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

<sup>11</sup> The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *G.A.*, Docket No. 09-2153 (issued June 10, 2010) (evidence from a registered nurse had no probative medical value as a nurse is not a "physician" as defined under FECA); *Roy L. Humphrey*, *supra* note 7.

<sup>12</sup> *See G.A.*, *supra* note 11; *Thomas L. Agee*, 56 ECAB 465 (2005) (a medical report may not be considered probative medical evidence unless it can be established that the person completing the report is a "physician" as defined in 5 U.S.C. § 8101(2)).

<sup>13</sup> *See S.S.*, Docket No. 14-23 (issued April 16, 2014); *David P. Sawchuk*, 57 ECAB 316 (2006).

<sup>14</sup> *See D.U.*, *supra* note 7; *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that her claimed left ankle condition was causally related to her employment.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained a diagnosed medical condition causally related to the accepted May 10, 2013 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 24, 2013 is affirmed.

Issued: June 12, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board